Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the matter of	)	ORIGINAL
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	CC Docket No. 96-115
	)	
Telecommunication Carriers' Use of	)	
Customer Proprietary Network	)	
Information and Other Customer	)	DOCKET FILE COPY ORIGINAL
Information	)	

COMMENTS OF
AMERICA'S CARRIER
TELECOMMUNICATIONS ASSOCIATION

America's Carrier's Telecommunication Association (ACTA), by its attorneys, files its initial comments in the foregoing Notice of Proposed Rulemaking (NPRM) proceeding.

Knowledge is power. The knowledge of a customer's proprietary network information (CPNI), "any information about [a] customer's network services and their use that a telephone company possessed because [the telephone company] provided those network services" (at ¶ 4), is the power to control and manipulate the customer and thereby competition and the marketplace.

The Commission fashioned its current CPNI rules in the Computer II and III proceedings (Id.). At that time, the Commission had intended to have the incumbent local exchange carriers "open" their networks and their network architectures to access by competitive enhanced service providers. The program was known as Open Network Architecture (ONA).

ACTA submits that the Commission would be well served to reflect on the effectiveness of its ONA program of which its current CPNI rules are a part. An interesting question is

0+4

whether ONA has worked? Are local exchanges "open" to competitive enhanced service providers so that they may freely access such local networks to create innovative enhanced services to the public? Or, has ONA failed to deliver its promised benefits of increased competitive provision of a wider array of services, or has it merely permitted the BOCs to continue to ensure their monopoly control of their networks to the detriment of competition?

ACTA submits that an honest appraisal of ONA, is that its great promise has gone the way of other grand plans to induce self-enlightened acceptance of the changing environment from monopoly to competition. ONA has plainly and simply failed. Local exchange networks are no more open to enhanced service competition than they are to local dial tone competition. One reason is that the Commission caved in to the desires of the BOCs to be able on the one hand to have their competitive arms freely access CPNI of customers they obtained as part of their monopoly provision of service and at the same time refuse to permit would-be enhanced service competitors access to that same, all-important information without the written permission of the customer.

The BOCs sold this policy to the Commission as a necessity of customer privacy. The effect however was simply to make it impossible for competitive enhanced service providers to obtain the information necessary to fashion a competitive offer and thereby to eradicate their ability to compete effectively.

ACTA makes its observations on the basis of indirect empirical evidence. ACTA is unaware of any robust enhancement industry segment which is currently exploiting an unfettered access to the "riches" of the local exchange network technologies and equipment. ACTA's observations are also supported in part by the reality of the growth of the Internet.

While ACTA strongly opposes the use of the Internet for plain old voice services, it sees, and applauds, the growth of the Internet as an end run of the refusals by the BOCs' to allow the ONA plan of the Commission to succeed. What was denied by the BOCs' refusal to embrace the opening of their networks in return for increased freedom to compete has been accomplished in part by the packet switching capabilities of the Internet.

The Commission appears to be faced therefore with evidence that the non-voice enhanced services of today's Internet have developed because (1) it's a "stealth" technology that has created a multitude of enhanced services by bypassing the local exchange networks to the extent that the BOCs were unable, because unaware, to blockade the access necessary to make such enhanced services a possibility; (2) the advances in telecommunications represented by the non-voice services of the Internet were accomplished in spite of Commission policies which doomed the chances for ONA to accomplish its pre-competitive goals; and (3) if real opportunities are created by sound policy, there are innovative minds and resources available that will create new services, new opportunities, new jobs and new economies.

Given such potentials, the Commission should use this proceeding to eliminate one of the apparent contributing factors to the defeat of ONA, the distorted rules regarding CPNI.[1] These rules are not based on common sense, much less any rational intellectual platform underpinning a true desire to inject competition into a tightly wound monopoly.

[1] It is only necessary to read the description of the ONA rules in the NPRM (at ¶¶s 5 and 6) to understand why they can be considered "distorted," by companies seeking to compete with the BOCs when knowledge of a potential customer's CPNI is a necessary component to fashioning a competitive offer.

Fundamentally, the Commission must devise rules that deny the use of CPNI obtained of necessity by the BOCs, AT&T and GTE because of their monopoly or dominant presence in the market. The Commission must deny access to CPNI by the competitive arms of these entities and ensure a mechanism for enforcing the denial of such access.

The Commission needs also to devise rules by which a customer's CPNI may be obtained by a competitive vendor in order for that vendor to create a competitive offer. Safeguards must be available so that overly zealous entities do not overstep the bound of privacy. However, it is imperative that the determination of what may stretch the bound of propriety not be placed in the hands of the BOC, GTE or AT&T, whose self-interest will result in unfair denial of needed information. A simple phone call from an end user should be all that is required to authorize the release of CPNI to a potential vendor for evaluation and/or design of a new service or a modified service responsive to an end user's needs

Abuses must be handled by informal complaints directed to the FCC. The BOC, GTE and AT&T can have no say in what rights of access to CPNI any competitor has. These "foxes" have ample of their areas of the "hen house" over which they exercise control.

The Commission's decisions about "pigeon-holing" services is disappointing (NPRM at ¶¶ 20-27). There is little doubt that the industry is making every effort to provide "one stop shopping." Telecommunications service marketing today, and increasingly in the future, will depend on offering a variety of services. Tailoring that offering to meet the totality of services end users demand requires knowledge of the combination of services of the variety of services an end user has. Making "pockets" of CPNI available undercuts the ability to effectively and comprehensively market as will be required to successfully compete.

Prior customer authorization appears to be key. If fairly obtained, there is no reason to exclude the marketing of other services. There is little worry about policing whether a competitive supplier has fairly obtained customer authorization to market other services. The difficult problem will be to stop incumbent carriers from using their favored position to extract unwitting authorizations or restrictions against disclosure from customers in an effort to defeat a competitive offer or to guard against an anticipated offer.

Restricting the use of a customer's CPNI on one services so that installation, maintenance and repair on another service cannot be performed is a questions for which a single answer does not appear possible. In particular fact situations, the performance of such work based on another service's CPNI may be logical, necessary and have little impact on competitive. In another factual context, the opposite may prove true. What is suggested perhaps is that rule preclude such cross-over services without prior proof of customer understanding and consent. Such a rule would put the carrier on notice that if no such prior understanding and consent exists or cannot be produced upon complaint of a customer or competitor, a fine or other sanction will be assessed and the offending carrier made to make appropriate restitution.

The Commission's discussion (NPRM at ¶¶ 28-33) seems to suggest a similar approach. The key is to recognize that the problem in this area stem from the usual source of unfairness. The incumbent carriers possess a vast amount of CPNI because of their favored positions as the monopoly carriers or previous monopoly carriers. Such unique access is open to abuse. Whatever rules are adopted must take this fact into consideration or the failures of ONA will simply be repeated.

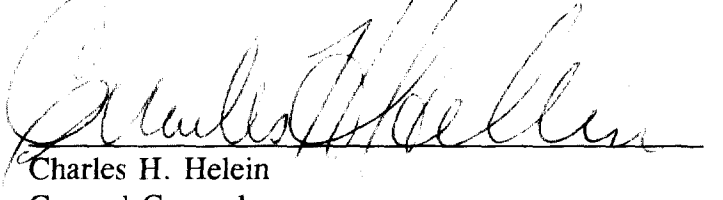
In regard to what additional mechanisms or procedures are needed to guard against unauthorized access to CPNI by third parties (NPRM at ¶ 34), the wrong question, or at least only half the question is being asked. Also important is what is required to guard against unauthorized, anti-competitive or discriminatory denial of CPNI to third parties.

Similarly, the questions about safeguards to prevent unauthorized access to CPNI is too narrowly focused. All carriers should be required to prevent unauthorized access. The requirement is self-executing when a carrier is motivated to protect its own customer base. The more difficult problems arise when it comes to effectively protecting against access to CPNI by employees or agents or non-affiliated third parties, when such access will unfairly impede competition. The restrictions on AT&T, the BOCs and GTE need not only to be retained, but strengthened.

ACTA strongly urges the Commission not to lift any rules on the supposed separation of AT&T's manufacturing arm. A separate subsidiary does not eliminate the immense potential for "non-affiliated collusion." Recently, AT&T was reported as having purchased $300,000,000 in cellular equipment from its new manufacturing arm, Lucent Technologies, Inc. Given AT&T's long history of anti-competitive conduct, there is no reason to believe that its separation of corporations will prevent its seeking continued unfair advantage. That advantage can be achieved equally as well, if not more so, through AT&T's "special relationship" with its "main manufacturer" as that manufacturer's largest customer, whose equipment purchases, regardless of cost, can be passed on to end users of AT&T's telecommunications services.

ACTA encourages the Commission to adopt CPNI rules and policies consistent with the concerns and suggestion made herein.

Respectfully submitted,
America's Carrier's Telecommunication Association

By 
Charles H. Helein
General Counsel

of Counsel:
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102

(703) 714-1300 telephone
(703) 714-1330 fax
helein@digitalnation.com e-mail